

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WASHINGTON  
AT SEATTLE

T-MOBILE NORTHEAST, LLC., a  
Delaware corporation,

Plaintiff,

vs.

SELECTIVE INSURANCE COMPANY OF  
AMERICA,

Defendant.

NO. \_\_\_\_\_

NOTICE OF REMOVAL

(FROM THE SUPERIOR COURT OF  
THE STATE OF WASHINGTON FOR  
KING COUNTY, CAUSE NO. 17-2-  
19988-5 SEA)

**Clerk's Action Required**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441(a), and 1446(a), Defendant, Selective Insurance Company of America ("Selective"), an entity incorporated in the State of New Jersey, with its principal place of business located at 40 Wantage Avenue, Branchville, New Jersey, by and through their undersigned attorneys, hereby gives notice that this action, captioned as *T-Mobile Northeast, LLC. v. Selective Insurance Company of America*, bearing Cause Number 17-2-19988-5 SEA ("State Court Action"), is removed to the United States District Court for the Western District of Washington at Seattle from the Superior Court of Washington, in and for King County.

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NO. \_\_\_\_\_

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(206) 292-9988

In support of this Notice of Removal, Selective states as follows:

**1. State Court Action:**

a. On or about July 27, 2017, at 2:03 P.M., Pacific Time, Plaintiff, T-Mobile Northeast, LLC (“Plaintiff”), commenced this action by filing a civil Summons and Complaint against Selective in the Superior Court of Washington for King County, bearing Case Number 17-2-19988-5 SEA (the “State Court Action”). *See* Plaintiff’s Complaint attached hereto as Exhibit A. Plaintiff seeks a Declaratory Judgment that Selective owes it a defense and indemnity for claims asserted against it in an underlying action venued in the United States District Court, Southern District of New York. Plaintiff also asserts claims against Selective for breach of contract, attorneys’ fees, bad faith, violation of the Washington State Consumer Protection Act, and for estoppel. Selective notes at the outset that it first filed a Declaratory Judgment Action on July 27, 2017, at 9:03 A.M., Pacific Time, against T-Mobile Northeast, LLC, in the Superior Court of New Jersey, Law Division, Morris County, bearing docket number MRS-L-001645-17 with respect to the identical tender for additional insurance coverage submitted on June 28, 2017, in which T-Mobile Northeast, LLC seeks a defense and indemnity for claims asserted against it in an underlying action venued in the United States District Court, Southern District of New York. *See* Exhibit G to the Declaration of Jeffrey S. Tindal (the “Tindal Decl.”). Selective intends to engage in motion practice to stay or dismiss the instant Complaint in favor of litigating the first-filed New Jersey Declaratory Judgment Action as New Jersey law plainly governs the parties’ coverage dispute and New Jersey is the proper venue.

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b. The State Court Action Complaint alleges that Plaintiff “a limited liability company organized under the laws of the State of Delaware.” *See* Exhibit A to Tindal Decl. at ¶ 2. The Complaint further alleges that Selective “is an insurance company, that at all relevant times, has been engaged in the business of selling insurance policies within the state of Washington.” *Id.* at ¶ 3.

c. The Complaint alleges that Selective issued an insurance policy to Innovative Engineering, Inc. (“Innovative”). The Complaint further alleges that Plaintiff qualifies as an insured under the Selective policy pursuant to an additional insured endorsement and contracts Plaintiff entered into with Innovative for professional services, including architectural, engineering, and surveying services. *Id.* at ¶¶ 6 to 14.

d. Plaintiff’s Complaint further alleges that on April 23, 2013, Plaintiff was sued in a matter captioned as *Virginia Properties, LLC. v. T-Mobile USA, et al.* (the “Underlying Action”). *Id.* at ¶ 9. Plaintiff was allegedly sued because of the professional services that Innovative performed on the building for Plaintiff. *Id.* at ¶ 23. Plaintiff’s Complaint further alleges that the plaintiff in the underlying lawsuit subsequently amended its complaint to name T-Mobile Northeast as the sole T-Mobile entity defendant.. *Id.* at ¶ 24.

e. The Complaint alleges, among substantially extraneous and unrelated allegations that form the basis of a separate and ongoing Declaratory Judgment Action already venued before this Court<sup>1</sup>, that Selective agreed to defend its named insured, Innovative, in the

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<sup>1</sup> T-Mobile USA filed a declaratory judgment action against Selective venued in the United States District Court for the Western District of Washington, bearing case number 2:15-cv-1739-JLR, in which a declaration was sought that T-Mobile USA was an additional insured under the Selective policy issued to Innovative. The Honorable District Court Judge Robart recently concluded that that T-Mobile USA was not an insured under the Selective Policy. (Dkt 82).

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Underlying Action, but denied any duty to defend or indemnify Plaintiff in the Underlying Action. *Id.* at ¶¶ 44, 138.

f. Plaintiff's Complaint alleges the following Counts against Selective: Declaratory Judgment (First Cause of Action); Breach of Contract (Second Cause of Action); Attorney's Fees (Third Cause of Action); Bad Faith (Fourth Cause of Action); Violation of the Washington State Consumer Protection Act (Fifth Cause of Action); and Estoppel (Sixth Cause of Action). *See* Exhibit A to Tindal Decl.

**2. Intradistrict Assignment:** This matter is being removed to the U.S.D.C. for the Western District at Seattle because, per LCR 3(d) and plaintiffs' Complaint, the claims allegedly arose in King County, Washington. Plaintiff's Complaint was filed in King County Superior Court.

**3. Record in State Court:** The following pleadings constitute all of the process, pleadings or orders received by Selective, or filed in the State Court Action as of this date:

- a. Complaint;
- b. Case Schedule Order;
- c. Case Information Cover Sheet
- d. Summons;
- e. Insurance Commissioner's Certificate of Service; and
- f. Notice of Appearance.

True and correct copies of these pleadings are attached to the Tindal Decl. as Exhibits A, B, C, D, E and F respectively, and filed concurrent hereto.

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1           **4. Timeliness of Removal:** The State Court Action was commenced when  
 2 Plaintiff's Summons and Complaint were filed with the Clerk of the King County Superior  
 3 Court on or about July 27, 2017. Service of the Summons and Complaint was effected on the  
 4 Insurance Commissioner on or about July 31, 2017. *See* Exhibit E to Tindal Decl. This Notice  
 5 of Removal is timely pursuant to 28 U.S.C. § 1446(b) in that it is being filed within thirty (30)  
 6 days of service of the Complaint.  
 7

8           **5. Diversity of Citizenship is Basis for Federal Court Jurisdiction:** This  
 9 dispute between Plaintiff and Selective is a controversy between citizens of different states.

10           **a.** This court has subject matter jurisdiction over this action pursuant to  
 11 28 U.S.C. § 1332(a)(1), insofar as there is complete diversity of citizenship between Plaintiff  
 12 and Selective.  
 13

14           **b.** Upon information and belief, Plaintiff is a limited liability company  
 15 organized under the laws of the State of Delaware. Plaintiff's principal place of business is  
 16 alleged to be in King County, Washington. *See* Exhibit A to Tindal Decl. at ¶ 2.

17           **c.** Selective is, and all material times has been, a New Jersey corporation  
 18 with its principal place of business at 40 Wantage Avenue in Branchville, New Jersey. *See*  
 19 Tindal Decl. at ¶ 2.

20           **d.** For purposes of determining if this action is removable on the basis of  
 21 diversity jurisdiction, this removal is not in conflict with 28 U.S.C. § 1441(b)(2) and may be  
 22 removed to the District Court for the Western District of Washington because Selective is not a  
 23 citizen of Washington State.  
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1           **6. Amount in Controversy Requirement is Satisfied:** The total amount in  
 2 controversy is not expressly set forth in Plaintiff’s Complaint. However, Selective believes and  
 3 therefore alleges that the monetary value relief Plaintiff seeks in this action exceeds \$75,000,  
 4 for the following reasons:

5           **a.** A district court has original diversity jurisdiction where “the matter in  
 6 controversy exceeds the sum or value of \$75,000, exclusive of interests and costs . . . .”  
 7 28 U.S.C. § 1332(a). While the party seeking removal “bears the burden of showing, at all  
 8 stages of the litigation, that the case is properly before the federal court,” where, as here, the  
 9 Plaintiff does not aver a specific amount of damages, a federal court has jurisdiction unless “it  
 10 appears to a legal certainty that the plaintiff cannot recover more than the jurisdictional amount  
 11 of \$75,000.” *Frederico v. Home Depot*, 507 F.3d 188, 193-95 (3d Cir. 2007) (quoting *Valley v.*  
 12 *State Farm Fire and Cas. Co.*, 504 F. Supp.2d 1, 3-4 (E.D. Pa. 2006)). “The rule does not  
 13 require the removing defendant to prove to a legal certainty the plaintiff can recover \$75,000 –  
 14 a substantially different standard.” *Id.* at 195 (quoting *Valley, supra*, 504 F. Supp. 2d at 3-4);  
 15 see also *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

16           **b.** Here, Plaintiff seeks a judgment declaring that Selective has an  
 17 obligation to indemnify it for any judgment obtained against it in the Underlying Action, in  
 18 addition to reimbursement of legal fees and costs. See Exhibit A to Tindal Decl. at p. 8, Prayer  
 19 for Relief.

20           **c.** In the Underlying Action, Virginia Properties, LLC seeks damages from  
 21 Plaintiff in excess of \$710,000. See Underlying Complaint at ¶ 37 attached as Exhibit H to the  
 22 Tindal Decl. Thus, Plaintiff’s contractual claim for indemnity is in excess of \$710,000.

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d. Plaintiff also seeks treble damages under the Washington State Consumer Protection Act (the “CPA”), which must be taken into account when determining whether the damages sought exceed \$75,000. *Frederico, supra*, 507 F.3d at 198-99 (considering punitive damages as part of the amount in controversy calculation); *Carevel, LLC v. Aspen Am. Ins. Co.*, 2014 WL 1922826, \*4 (D.N.J. May 14, 2014) (“[p]unitive damages . . . are part of the amount in controversy for this calculation.”). For purposes of the amount in controversy requirement, courts assume that the plaintiff can recover any maximum multiplier for punitive damages. *Carevel, supra*, 2014 WL 1922826, at \*4. Under the CPA, treble damages are capped at \$25,000 and Plaintiff seeks \$25,000 under the CPA. Plaintiff’s pursuit of treble damages further demonstrates that the amount claimed in this case exceeds the jurisdictional amount in controversy requirement of \$75,000.

e. Plaintiff seeks its attorney fees under various theories.

f. Based on the alleged compensatory and punitive damages sought by Plaintiff in this matter, the amount in controversy clearly exceeds the sum or value of \$75,000, exclusive of interests and costs, and therefore, meets this Court’s jurisdictional requirement.

**7. Applicable Statutes:** This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and the action is removable pursuant to 28 U.S.C. § 1441(b).

**8. Concurrent Notice to State Court:** Selective is concurrently filing a copy of this Notice of Removal with the Clerk of the King County Superior Court, pursuant to 28 U.S.C. § 1446(d). Selective will serve a copy of this Notice of Removal on counsel of record for Plaintiff.

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NO. \_\_\_\_\_

1 DATED this 24<sup>th</sup> day of August, 2017.

2 BETTS, PATTERSON & MINES, P.S.

3 By /s Jeffrey S. Tindal

4 Jeffrey S. Tindal, WSBA #29286

5 Betts, Patterson & Mines, P.S.

6 One Convention Place, Suite 1400

7 701 Pike Street

8 Seattle WA 98101-3927

9 Telephone: (206) 292-9988

10 Facsimile: (206) 343-7053

11 E-mail: jtindal@bpmlaw.com

12 Attorneys for Defendant Selective Insurance  
13 Company of America  
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**CERTIFICATE OF SERVICE**

I, Jeffrey S. Tindal, hereby certify that on August 24, 2017, I electronically filed the following:

- **Notice of Removal; and**
- **Certificate of Service.**

with the Court using the CM/ECF system which will send notification of such filing to the following:

***Counsel for Plaintiff T-Mobile Northeast, LLC***  
Michael A. Moore  
Kelly H. Sheridan  
Corr Cronin Michelson Baumgardner & Preece LLP  
1001 4th Ave Ste 3900  
Seattle, WA 98154-1051

DATED this 24<sup>th</sup> day of August 2017.

BETTS, PATTERSON & MINES P.S.

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Insurance

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